

Message Text

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E.O. 11652: GDS
TAGS: EINV, SN, US
SUBJECT: US-SINGAPORE BILATERAL INVESTMENT TREATY

REF: SINGAPORE A-45

1. MFA HAS PROVIDED US WITH COPY OF DRAFT INVESTMENT TREATY IT HAS SUBMITTED TO DEPARTMENT THROUGH SINGAPORE EMBASSY WASHINGTON. WE HAVE COMPARED DRAFT WITH TREATY GOS RECENTLY CONCLUDED WITH SWITZERLAND (SEE REFAIR) AND IN GENERAL FIND THAT TERMS OF LATTER WOULD BE MORE ADVANTAGEOUS TO US INVESTORS IN SINGAPORE THAN RATHER SKELETAL DRAFT PROPOSED FOR TREATY WITH US. ON QUESTION OF US-SINGAPORE TREATY AS PRECEDENT FOR INVESTMENT TREATIES WITH OTHER COUNTRIES, WE WOULD SUGGEST THAT TREATY BASED ON EXISTING GOS-SWISS TREATY COULD BE CONSIDERED TO SET LESS PRECEDENT FOR USG THAN TREATY WRITTEN DE NOVO; I.E., TREATY WOULD SEEM TO FOLLOW GOS PRECEDENT RATHER THAN SETTING NEW PRECEDENT FOR US. SPECIFIC COMPARISON OF KEY PROVISIONS AND OTHER COMMENTS FOLLOW.

2. ARTICLE 2(1) IN GOS-SWISS TREATY CONTAINS USEFUL COMMITMENT BY PARTIES ON PROTECTION OF INVESTMENT
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WHICH IS NOT INCLUDED IN GOS DRAFT. ARTICLE 2(2) PROVIDES FOR MFN OR NATIONAL TREATMENT OF INVESTMENT, WHICHEVER IS MORE FAVORABLE. GOS DRAFT PROVIDES ONLY FOR MFN TREATMENT. SINCE MAIN PURPOSE OF TREATY IS TO PROTECT US INVESTMENT IN SINGAPORE, WHICH PURPOSE IS PRESUMABLY SHARED BY BOTH COUNTRIES, MORE FAVORABLE LANGUAGE IN SWISS TREATY WOULD BE PREFERABLE.

3. ARTICLE 4 ON EXPROPRIATION OR NATIONALIZATION IN SWISS TREATY SEEMS TO US BETTER THAN ARTICLE 5 ON SAME SUBJECT IN GOS DRAFT SINCE IT INCLUDES PUBLIC INTEREST CRITERION AND DUE PROCESS OF LAW.

4. ARTICLE 4(2) OF GOS DRAFT STATES THAT INVESTMENTS "SHALL NOT BE ENTITLED TO ANY TREATMENT OR PRIVILEGE WHICH IS NOT AVAILABLE, ON A RECIPROCAL BASIS, TO INVESTMENTS OF NATIONALS OF OTHER CONTRACTING PARTY". LANGUAGE STRIKES US AS UNCLEAR AND POSSIBLE INTERPRETABLE AS MEANING THAT US WOULD HAVE TO GIVE SINGAPORE INVESTORS SAME PRIVILEGES (INVESTMENT INCENTIVES) AS THOSE TO WHICH US INVESTORS IN SINGAPORE ARE "ENTITLED". THIS IS SURELY NOT GOS INTENT, BUT LANGUAGE NEEDS TO BE CLARIFIED.

5. ARTICLE 8(2) OF GOS DRAFT POSES MORE SERIOUS PROBLEM, SINCE USG WOULD BE COMMITTED TO BUYING PIG IN A POKE ON FUTURE ASEAN ARRANGEMENTS. OF PARTICULAR CONCERN IS POSSIBILITY THAT GOS MIGHT RELUCTANTLY ACCEPT SAME ASEAN INDUSTRIAL COMPLEMENTATION SCHEME THAT WOULD GIVE SPECIAL PROTECTIONIST TREATMENT TO ASEAN COMPANIES ESTABLISHED UNDER SCHEME. LANGUAGE IN ARTICLE 2(2) OF SWISS TREATY SEEMS TO US BETTER BECAUSE IT SEEMS TO LIMIT SPECIAL CONFIDENTIAL

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TREATMENT TO PRIVILEGES DERIVING FROM A CUSTOMS UNION, COMMON MARKET OR FREE TRADE AREA; I.E., TO TARIFF PREFERENCES RATHER THAN BROADER REGIONAL ARRANGEMENTS WHICH COULD INCLUDE FOREIGN INVESTMENT GUIDELINES OR SPECIAL BENEFITS FOR CERTAIN ASEAN INDUSTRIES.

6. IN SUM, WE BELIEVE THAT GOS-SWISS TREATY PROVIDES SUBSTANTIALLY BETTER NEGOTIATING DRAFT THAN THAT GOS HAS SUBMITTED TO US.

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